

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

APR 29 2016

Clerk, U.S. District Court  
District Of Montana  
Billings

WILLIAM MAURICE SMITH,

Plaintiff,

vs.

BILLINGS POLICE DEPARTMENT,  
RUSTY L. WILSON and TRAVIS  
KNECHT,

Defendants.

CV 16-25-BLG-SPW

ORDER

This matter comes before the Court on the Findings and Recommendations of United States Magistrate Judge Carolyn Ostby. (Doc. 6). Defendant William Maurice Smith filed a Motion to Proceed in Forma Pauperis (Doc. 1) and a Complaint seeking damages from individuals who allegedly shot him in October 2001. (Doc. 2). In her Findings and Recommendations, Judge Ostby granted Smith's Motion to Proceed in Forma Pauperis and recommends that this Court dismiss Smith's Complaint based on the statute of limitations.

Pursuant to 28 U.S.C. § 636(b)(1), written objections to Judge Ostby's Findings and Recommendations were due 14 days after their filing. No objections were filed. When neither party objects, this Court must still review Judge Ostby's conclusions for clear error. Clear error exists if the Court is left with a "definite

and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir.2000). After reviewing the Findings and Recommendations, this Court does not find that Judge Ostby committed clear error.

Accordingly, IT IS HEREBY ORDERED

1. Judge Ostby’s Findings and Recommendations (Doc. 6) are ADOPTED IN FULL.

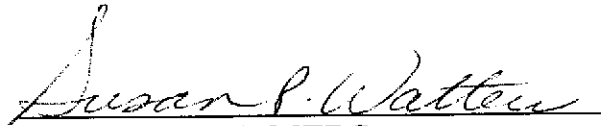
2. Smith’s Complaint (Doc. 2) is DISMISSED with prejudice.

3. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

4. The Clerk of Court shall have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) based upon Smith’s failure to file within the statute of limitations.

5. The Clerk of Court shall have the docket reflect that pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith because the Complaint lacks arguable substance in law or fact.

DATED this 28<sup>th</sup> day of April 2016.

A handwritten signature in cursive script, reading "Susan P. Watters", written over a horizontal line.

SUSAN P. WATTERS

United States District Judge